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March 27, 2003

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The Honorable John D. Ashcroft
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Attorney General:

I am in receipt of your Department's most recent correspondence to me concerning my request for a special counsel to investigate alleged campaign improprieties by Democratic officials in Michigan.

Contrary to the assertion in your letter, I most definitely have not withdrawn my request for the appointment of a special counsel. As a matter of fact, my own preliminary review of the facts surrounding the investigation by the United States Attorney for the Eastern District of Michigan lead me to believe that there are extensive and intractable problems with the investigation and that a special counsel is clearly warranted.

Since I first wrote to you in December, the following new concerns regarding the investigation have come to my attention:

- 1) The investigation is being conducted in a manner designed to embarrass Democratic office holders who are not the target of the investigation;
- 2) The U.S. Attorney's Office is applying a double standard with regard to the investigation of Republican office holders; and
- 3) There are significant conflicts of interest within the investigation itself.

Considered collectively, I believe the concerns laid out in my December 12, 2002, letter as well as these additional problems (described in greater detail below) clearly mandate the appointment of a special counsel under your Department's regulations.

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1. The Investigation is being Conducted in a Manner Designed to Embarrass Democratic Office Holders Who are not the Target of the Investigation

Any objective review of the facts and circumstances surrounding this investigation indicates that it is not only being conducted in a highly unorthodox fashion, which skirts, if not directly violates, ethical and professional rules, but is being performed in a manner designed to cause maximum embarrassment to Democratic office holders.

First, in numerous instances where information was being sought, it was obtained through inflammatory search warrants and high profile raids, rather than through voluntary compliance, as would be more usual and customary. To my knowledge, this investigation has involved surprise raids on numerous campaign and public offices, including the campaign and county offices of Wayne County Executive Edward McNamara, Deputy County Executive Mary Zuckerman, Assistant County Executive Suzanne Hall, and Chief of Staff Eddie McDonald.¹ Ultimately, federal agents seized office equipment and hundreds of documents and served employees with grand jury subpoenas, again, without seeking any voluntary compliance.² This technique not only insults and offends the party from whom information is being sought, it inevitably results in increased media interest in and embarrassment to the party involved.³

Second, the prosecutor's determination to file a list of evidence seized with the U.S. District Court Clerk ensured that the specific evidence seized and the names of the Democratic officeholders subject to these searches would be made public. I need not remind you that your regulations state that "in the absence of some significant justification, it is generally not appropriate for a United States Attorney to identify (either by name or unnecessarily-specific description), or cause a defendant to identify, a third-party wrongdoer unless that party has been officially charged with the misconduct at issue."⁴ The guidelines also state that "in all public filings and proceedings, federal prosecutors should remain sensitive to the privacy and reputation

¹Dennis Niemiec *et al.*, *Day-Long Raid Seizes McNamara Files*, DET. FREE PRESS, Nov. 23, 2002.

²*Id.*; Dennis Niemiec & Kim North Shine, *U.S. Seeks Granholm Files*, DET. FREE PRESS, Dec. 5, 2002.

³See Chris Christoff, *FBI Probe is as Cloudy as the Behavior that Led to It*, DET. FREE PRESS, Dec. 2, 2002.

⁴U.S. DEPARTMENT OF JUSTICE, U.S. ATTORNEYS' MANUAL § 9-16.500.

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interests of uncharged third-parties.”⁵ Comparing these rules to the methods used in the investigation, it leads to the conclusion that when the U.S. Attorney’s Office was given a choice between traditional law enforcement practice and a more unusual procedure designed to embarrass Democratic officeholders, it opted for the latter.

Third, the federal prosecutors involved in the case have chosen to leak information to the media, in potential violation of federal grand jury secrecy requirements. This admission, stated clearly in the December 13, 2002 *Detroit Free Press*, is both stunning and damning: “Law enforcement officials, who asked not to be identified because they are not supposed to discuss the investigation, said people began approaching the FBI after the Nov. 22 search of various county and campaign offices. The officials said the number of potential witnesses has increased over the last several days.”⁶

As you are no doubt aware, Federal Rule of Criminal Procedure 6(e) provides that, except in limited circumstances, prosecutors, grand jurors, or court officials “must not disclose a matter occurring before the grand jury.”⁷ Courts have interpreted “matters occurring before the grand jury” to include “‘the identities of witnesses or jurors, the substance of testimony’ as well as actual transcripts, ‘the strategy or direction of the investigation, the deliberations or questions of jurors, and the like.’”⁸ which appears to have been done in this case. The grand jury secrecy rules contain no exceptions for law enforcement personnel who speak to the press anonymously. Furthermore, comments to the media about matters before the grand jury are subject to contempt of court sanctions.⁹ Yet, I am aware of no effort by the United States Attorney’s office to determine the identity of these law enforcement officials.

Unfortunately, this leak is not the only instance where prosecutors have exceeded their authority. For instance, officials have seized the personal checkbooks and bills of Wayne County

⁵*Id.* § 9-27.760.

⁶Dennis Niemiec, *Contractors Tell of Strong-Arm County Tactics*, DET. FREE PRESS, Dec. 13, 2002.

⁷FED. R. CRIM. P. 6(e).

⁸In *Re: Motions of Dow Jones & Company*, 142 F.3d 496, 500 (D.C. Cir. 1998) (quoting *SEC v. Dresser Indus.*, 628 F.2d 1368, 1382 (D.C. Cir. 1980)).

⁹*United States v. Myers*, 123 F.3d 350, 356 n.3 (6th Cir. 1997).

employees.¹⁰ They also confiscated campaign records of Wayne County Prosecutor Mike Duggan, records that were outside the scope of search warrants.¹¹

2. The U.S. Attorney's Office is Applying a Double Standard with Regard to the Investigation of Republican Office Holders

The fact that the federal government is investigating this while other, similar allegations against Republican officials remain untouched gives the appearance that the U.S. Attorney's Office is applying different standards for investigations of Democratic and Republican officials. To cite just one example, shortly after converting a \$55 million per year State of Michigan-EDS contract into a \$555 million agreement, former Governor John Engler received a \$250,000-a-year position with EDS.¹² The U.S. Attorney's Office has opened no investigation into this troubling matter to my knowledge.

Moreover, it has been reported to me that Governor Engler's legal counsel screened all candidates for the U.S. Attorney for the Eastern District of Michigan position on behalf of the Bush Administration and asked each candidate whether they would be willing to investigate and prosecute Democratic officials in Wayne County, namely Edward McNamara. No similar questions were posed with regard to investigating or prosecuting any Republican official. In my judgements this is a highly inappropriate political litmus test for what should be an apolitical position. If true, this fact alone would mandate your selection of a special counsel in this matter.

3. There are Significant Conflicts of Interest Within the Investigation Itself

I also was somewhat disturbed to learn that Mr. Collins has close financial ties to a political opponent of a party who has received a subpoena in connection with the investigation. According to records on file with the Michigan Secretary of State, Mr. Collins, while a candidate for the Michigan Supreme Court, received his single largest contribution, \$34,000.00, from Dick

¹⁰Paul Egan & David Shepardson, *Feds Seek Granholm Files*, DET. NEWS, Dec. 5, 2002, at 1A.

¹¹David Shepardson, *U.S. Attorney: Kilpatrick, 2 Others not Focus of Probe*, DET. NEWS, Dec. 13, 2002.

¹²Laura Berman, *Cozy EDS-Engler Ties Benefit Both*, DET. NEWS, Mar. 9, 2003.

Posthumus, who became Governor Jennifer Granholm's opponent in the 2002 gubernatorial race.¹³

In addition, it has been reported that in the critical early stages of this investigation, Special Agent David Hunt was simultaneously the case agent for the FBI and the spouse of an employee of the Wayne County Auditor General.¹⁴ It is no secret that the administration of Wayne County Executive Ed McNamara had frequently criticized the Auditor's office. This certainly raises the possibility that critical investigative decisions have been prompted by a family grudge, rather than fundamental principles of justice.

As I am sure you are aware, your regulations require the appointment of a special counsel when you determine (1) "a criminal investigation of a person or matter is warranted;" (2) "that investigation or prosecution . . . by a United States Attorney's Office or litigating Division of the Department of Justice would present a conflict of interest . . . or other extraordinary circumstances;" and (3) it would be in the public interest to appoint an outside Special Counsel to assume responsibility for the matter."¹⁵ In my judgment, both of the above circumstances – subpoenaing an individual when the prosecutor had received his largest single contribution from her political opponent, and utilizing the services of a special agent married to an employee of an office frequently at odds with the principal target of the investigation – create a *per se* conflict that warrants the appointment of a special counsel.

Finally, given that the allegations in the case involve state office holders alleged to have violated state campaign laws,¹⁶ even the initial decision to involve the federal authorities, rather than leave the matter to the state, must be questioned. Taking an investigation whose center of gravity is clearly state campaign violations and twisting it into a federal case only reinforces the need to bring in a special counsel free of political taint.

¹³Committee to Elect Jeffrey G. Collins to the Michigan Supreme Court, filing with the Michigan Department of State, Sept. 28, 1998, Michigan Department of State Internet site: http://miboecfr.nicusa.com/cgi-bin/cfr/show_img.cgi?doc_seq_no%3D159717%26com_id%3D509365%26doc_stmnt_year%3D1998%26total_images%3D17%26image_id%3D1%26doc_scanned%3D09/29/1998%26doc_date_proc%3D09/29/1998%26doc_type_code%3DC2%26caller%3D%26last_match%3D%26cfr_com_id%3D%261%3DI (visited February 20, 2003)

¹⁴David Shepardson, *FBI Replaces Agent in Probe*, DET. NEWS, Dec. 17, 2002, at 1B.

¹⁵28 C.F.R. § 600.1 (2002).

¹⁶Dennis Niemiec & Chris Christoff, *McNamara Probers Eye '98 Election*, DET. FREE PRESS, Dec. 12, 2002.

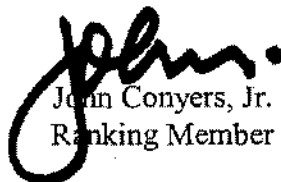
The Honorable John D. Ashcroft

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I again, therefore, ask you to appoint a special counsel in this matter, or explain to me why such an appointment is not in the public interest under your regulations. Thank you for your time and attention to this matter. Please reply to my Committee office at B-351-C Rayburn House Office Building, tel. 202-225-6504, and fax to Perry Apfelbaum, my Chief of Staff, at (202) 225-4423.

Sincerely,

A handwritten signature in black ink, appearing to read "John Conyers, Jr.", with a large, stylized flourish at the end.

John Conyers, Jr.
Ranking Member

cc: The Honorable F. James Sensenbrenner, Jr
Chairman
U.S. House Judiciary Committee

The Honorable Jamie E. Brown
Acting Assistant Attorney General
U.S. Department of Justice